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In the Supreme Court of the United States

OCTOBER TERM, 1985

CHULA VISTA CITY SCHOOL DISTRICT, ET AL., PETITIONERS

v.

WILLIAM J. BENNETT, SECRETARY OF EDUCATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioners challenge the validity of an internal measure used by the Secretary of Education for the last 30 years in calculating awards of Impact Aid under 20 U.S.C. (& Supp. I) 236 *et seq.* to school districts that educate "federally-connected" children — *i.e.*, children whose parents reside on or are employed on federal land which, because of its federal status, is exempt from local property taxation.

1. Pursuant to 20 U.S.C. (& Supp. I) 236 *et seq.*, a local educational agency (LEA) may apply to the Secretary of Education for annual "Impact Aid" payments if the LEA provides free public education to a certain number of federally-connected children. The amount of assistance is based upon a comparison of the LEA's per pupil expenditure for nonfederal children with those of other "generally comparable" school districts in the state. Since the early 1950's, the Secretary has used a standard, the so-called "$50

Rule," to evaluate whether particular school districts are in fact "generally comparable" to claimant LEAs. If the average local contribution of a selected school district is more than $50 higher than the claimant's contribution (per nonfederally-connected child), they are not considered comparable. In effect, the rule awards for each federally-connected child approximately the amount a district raises locally for its nonfederally-connected children. In fiscal years 1978 and 1979, the Secretary also used a "grid" of 14 criteria in determining whether districts were generally comparable; under the grid, the applicant school district needed only to be similar to the allegedly comparable school districts in at least five of the 14 criteria. Pet. App. A3.

Petitioners are 55 LEAs in California that filed Impact Aid applications for fiscal year 1979. Each requested, and was paid, only the statutory minimum. Later that year petitioners learned that the Department of Education had temporarily decided to gauge comparability solely by the grid, without reference to the $50 Rule. Accordingly, they submitted amended applications, now claiming that they were "generally comparable" to the richest LEAs in the state. For example, class representative Chula Vista, with a per student contribution of $467, contended it was "generally comparable" to districts that averaged $1,473 per student (Pet. App. A3). The Secretary applied the $50 Rule and denied the amended applications.

Petitioners then brought the instant action in the United States District Court for the Southern District of California, challenging the validity of the $50 Rule and seeking to enjoin the Secretary from denying their requests. In short, petitioners sought an injunction requiring the Secretary to pay them Impact Aid in accordance with the local contribution rate they had selected. The district court held that the $50 Rule was invalid because it acted as an unauthorized cap on benefits (Pet. App. E1-E22). The court remanded the

matter to the Department of Education with directions to process petitioners' amended applications in accordance with the grid (*id.* at E3-E4).[1]

The court of appeals reversed (Pet. App. A1-A14). The court held that the $50 Rule was valid because it was consistent with the language of the statute and with "the bulk of the legislative history" (*id.* at A11), and because the Secretary was entitled to great deference since the $50 Rule was contemporaneous with the implementation of the Impact Aid law and had been in effect for 30 years (*id.* at A6). The court also ruled that the notice and comment procedures of the APA and the GEPA were not applicable to the $50 Rule (Pet. App. A11-A12). Finally, the court rejected petitioners' estoppel argument, emphasizing that even if estoppel could ever run against the government, petitioners had not alleged detrimental reliance and would not be entitled to estoppel even against a private party (*id.* at A13).

2. The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review by this Court therefore is not warranted.[2]

a. Petitioners contend (Pet. 4-6) that use of the $50 Rule with respect to their amended applications for fiscal year 1979 violated 20 U.S.C. 1232(c), which provides that "[a]ll

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[1]The district court also rejected several of petitioners' contentions. It found no merit to petitioners' claim that the $50 Rule was invalid because it was not published pursuant to the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(2), or the General Education Provisions Act (GEPA), 20 U.S.C. (& Supp. I) 1221-1234e. In addition, the court concluded that estoppel did not preclude the government from using the $50 Rule.

[2]Petitioners do not challenge the court of appeals' rulings with respect to compliance with notice and comment procedures (Pet. App. A11-A12) and estoppel (*id.* at A13-A14).

such regulations shall be uniformly applied and enforced throughout the fifty States." As a corollary, petitioners argue that the court of appeals erred in sustaining use of the $50 Rule in these circumstances as "an experimental aberration" (Pet. App. A12) because, in doing so, the court of appeals expanded the scope of deference to which the Secretary was entitled.

Petitioners' argument is without merit. First, petitioners ignore the fact that the measure applied to them was the "longstanding" rule (Pet. App. A12). Thus, its use was not "aberrational" at all but was consistent with the standard that had been applied for 30 years. The court of appeals correctly accorded great deference to the Secretary's decision to employ the $50 measure in aid calculations. *Blum* v. *Bacon*, 457 U.S. 132, 141 (1982); *Andrus* v. *Shell Oil Co.*, 446 U.S. 657, 667-668 (1980). It was also correct in holding that the Secretary's denial of petitioners' amended applications did not involve selective enforcement "in any meaningful sense" (Pet. App. A12). The Secretary, having briefly experimented with awarding Impact Aid without reference to the $50 benchmark, decided to return to the standard that prevailed for three decades rather than accede to petitioners' inflated requests.[3]

b. Petitioners also contend (Pet. 6-7) that the $50 Rule was invalid ab initio because it conflicts with the Impact Aid statute. Petitioners cite (*ibid.*) a single passage from the legislative history — the same passage relied on by the district court (Pet. App. E13) — to support their argument.

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[3]Moreover, petitioners would not be entitled to the excessive amounts requested even if they could show that other applicants were overpaid in fiscal year 1979. If petitioners are correct in urging that absolute uniformity is required, then the only remedy is for the Secretary to attempt to recover the excessive amounts from the other applicants, not for petitioners to receive a windfall.

The court of appeals, on the other hand, thoroughly canvassed the legislative record (Pet. App. A7-A11) and determined that, while "isolated portions" "might favor [petitioners'] position, * * * the bulk of the legislative history supports the $50 Rule" (*id.* at A11).[4]

c. There is a further reason why this case does not warrant this Court's review. The Secretary has promulgated new regulations (49 Fed. Reg. 31628 (1984)) that supplant the procedures at issue in this case. Accordingly, there is no prospective significance to this case because the new regulations will apply to all future aid awards.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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[4]In addition, we note that in the 30-year existence of the $50 Rule, the Impact Aid law was amended no fewer than 14 times and not once did Congress change the way in which the Secretary made determinations of general comparability. See 20 U.S.C. 238 note.

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